

REMARKS:

Status of the Claims

Claims 1-28 were originally filed. Claims 1-13 were elected without traverse on August 1, 2006 in response to the Restriction Requirement. Claim 3 was canceled in the July 10, 2007 Amendment. Claims 1, 2, and 4-13 stand rejected in the April 1, 2008 Office Action. Upon entry of this amendment, the same set of claims will be pending.

Applicants respectfully submit the newly amended claims are fully supported by the specification as filed (*See*, Specification, page 8, lines 13-30; page 15, lines 20-21). No new matter has been introduced. Applicants respectfully request reconsideration and withdrawal of rejection in view of the following remarks.

Claim Rejections Under 35 U.S.C. § 103 – Ness (US 6,024,943) and Caswell (US 6,958,313) in View of Bacon (US 5,500,138)

Claims 1, 2, 4, and 7-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ness (US 6,024,943) and Caswell (US 6,958,313) in view of Bacon (US 5,500,138).

Examiner alleges Ness discloses that melamine formaldehyde precondensate as a preferred encapsulating polymer for particles containing perfume materials (*See*, Office Action, page 2, lines 4-5), while acknowledges that Ness does not disclose the ClogP value of the perfume materials used in the prior art invention (*See*, Office Action, page 3, lines 11-12).

Examiner also alleges that Caswell teaches that it is preferred to have at least 7 different enduring perfume ingredients (*See*, Office Action, page 3, lines 13-15) and shows the amount of perfume materials added in the fabric softener compositions (*See*, Office Action, page 3, lines 15-17).

Examiner further alleges that Bacon teaches that the example perfume composition comprises 65% of perfume materials having Clog P of 4.0 or higher (*See*, Office Action, page 3, lines 18-21).

Examiner, therefore, concludes that it would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Ness by incorporating the perfume mixtures of Caswell, and the skilled artisan would have had a reasonable expectation of successfully producing a controlled-release fabric softener with enduring fragrance (*See*, Office Action, page 4, lines 1-5).

Applicants respectfully submit that the newly amended independent claims 1, 8, and 11 recite a **liquid** fragrance/core thereby providing a **liquid** core to the polymer encapsulated fragrance. It would be apparent to one skilled in the art that the claimed invention teaches a capsule particle containing a liquid core and it is particularly well suited for use in a wash off product (*See*, Specification, for example, page 8, lines 13-30 and page 15, lines 20-21).

However, nowhere does Ness provide any teaching, suggestion, or motivation of a wash off product comprising a liquid fragrance material encapsulated by a polymer to provide a polymer encapsulated fragrance.

In contrast to the present invention, Ness clearly discloses “**this invention uses polymer particles which are solid-although they may be porous as well as solid-rather than particles in the form of hollow capsules**” (*See*, Ness, col. 3, lines 47-49). Ness teaches that solid particles are advantageous over hollow capsules and the polymerization reaction can be carried out in the absence of the liquid.

Obviousness of a composition or process must be predicated on something more than it would be obvious to try the particular component recited in the claims or the possibility it will be considered in the future, having been neglected in the past (*See, Ex parte Argabright et al.* (POBA 1967) 161 U.S.P.Q. 703). Furthermore, although a prior

art device “may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so” (*See*, 916 F.2d at 682, 16 USPQ2d at 1432; *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992)). There is no teaching, motivation, or suggestion in Ness to modify a solid particle disclosed therein with the Caswell and Bacon disclosure to arrive at the liquid core of the claimed invention.

Moreover, Ness teaches away from the claimed invention by teaching solid particles are superior to hollow capsules. Therefore, the wash off product of the claimed invention is patentably distinct over the **solid particles** of Ness. There is no teaching, suggestion, or motivation in Ness that replacing the **solid particle** materials with the capsule materials taught by Caswell and Bacon would achieve the same result without **undue experimentation**.

Thus, one skilled in the art would not be motivated to modify the solid particles of Ness with Caswell and Bacon to arrive at the claimed invention with any expectation of success. Accordingly, it is submitted the newly amended claims are not obvious under 35 U.S.C. § 103(a) in view of Ness and are therefore believed to be patentable.

Claim Rejections Under 35 U.S.C. § 103 – Ness, Caswell, and Bacon, and Further in View of Birch (US 6,927,195)

Claims 5 and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ness, Caswell, and Bacon as applied to claims 1, 2, 4, and 7-13 as above, and in further in view of Birch (US 6,927,195).

Claims 5 and 6 depend, directly and indirectly, from claim 1. A claim that “depends from a prior claim” incorporates all the limitations of the prior claim (*See*, 35 U.S.C. 112, 4th paragraph). When an independent claim is patentable over the prior art, its dependent claim should be deemed patentable as it incorporates all the limitations of the independent claim and further limits the independent claim. Since there is no teaching, motivation, or suggestion to combine Ness with Caswell and Bacon, there is no

teaching, motivation, or suggestion to combine all three references further with Birch to arrive at claims 5 and 6 of the present invention. Accordingly, claims 5 and 6 are believed to be patentable over Ness, Caswell, Bacon, and Birch by virtue of their dependency from claim 1.

CONCLUSION:

In view of the foregoing, Applicants respectfully request reconsideration, withdrawal of rejections, and allowance of all claims now present in the application.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment to the Deposit Account No. 12-1295.

Respectfully submitted,



Date: July 29, 2008

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